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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 683

ALFRED SCOTT ALDRIDGE, PETITIONER,

vs.

UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF.

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vs.

UNITED STATES OF AMERICA, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF.

Alfred Scott Aldridge, petitioner herein, prays that a writ of certiorari issue to review the judgment of the Court of Appeals of the District of Columbia in the above-entitled cause entered January 6, 1931 (R. 49).

Questions Presented.

Petitioner was indicted and convicted of murder in the first degree. He was sentenced to death (R. 6).

Petitioner was tried twice. At the first trial the jury disagreed. At the second trial counsel requested the trial court to permit an inquiry of prospective jurors to ascertain whether any of them would entertain racial prejudices in a case wherein the defendant was a negro and the deceased a white policeman (R. 10). The request was based upon the fact that at the first trial hereof counsel was informed that one juror did entertain racial prejudices and that fact influenced the juror's deliberations (R. 10). The trial court, however, refused to allow the inquiry. With an exception duly noted, the trial proceeded.

2. The second question presented is the refusal of the trial court to withdraw from the consideration of the jury the question of the defendant's guilt of first degree murder, for the reason that there was no evidence of deliberation or premeditation, requisite to constitute murder in the first degree in the District of Columbia (R. 35, 37).

Statement of the Case.

In the early morning of July 6, 1929, petitioner and his brother were apprehended by a white police officer, the decedent herein. At the time of the arrest the officer was in an automobile and ordered petitioner and his brother to enter. They did so. The automobile and its occupants proceeded from the place of arrest to 17th and Q Streets northwest, Washington, D. C., a distance of approximately four blocks. At the

latter location the car was stopped and immediately a shot was heard inside. Petitioner jumped out of the automobile and ran west on Q Street. The brother likewise alighted and proceeded to run north on 17th Street, northwest. McDonald, the officer, got out of the automobile, fired at the petitioner, missed him, but then shot and killed his brother. Two days later the defendant was arrested, and when taken to the police station admitted his identity, but insisted that his brother had fired the fatal shot. He informed the police of the location of his gun and they immediately found it. When presented with it by the police, the defendant admitted that it was the gun used by him on the night of the tragedy. It contained two empty shells. McDonald subsequently died. At the trial of this cause experts testified that the bullet causing the death of McDonald had been fired from petitioner's gun. At the time of his arrest petitioner was confronted with the statement that it was impossible for his brother to have fired the fatal shot for the reason that there were no empty shells found in his brother's revolver at the time of the tragedy. To which the defendant replied, "Well, I am ready to take my medicine." At the trial hereof petitioner took the stand in his own behalf, denied that he had killed the deceased officer, but insisted that his brother had done so. As has been heretofore set forth, petitioner was tried twice. At the first trial the jury were discharged after twenty-two hours of deliberation for the reason

that they were unable to agree. Petitioner was subsequently tried, convicted and sentenced to death.

Reasons for the Allowance of the Writ.

1. There is a distinct conflict between the opinion of the Court of Appeals of the District of Columbia rendered herein and the opinion of the Circuit Court of Appeals of the Sixth Circuit rendered in the case of *Beatty v. United States,* 27 Fed. (2d) 323, 324, wherein a question closely analogous to the question herein presented was decided in favor of the contention of this petitioner.

2. That the Court of Appeals of the District of Columbia has failed to give proper effect to the decisions of this court rendered in the case of *Queen v. Hepburn,* 7 Cranch 290, 297; *Connor v. United States,* 158 U. S. 408, 413, and *Reynolds v. United States,* 98 U. S. 146.

3. The examination of the jury upon the *voir dire* goes to the very fundamental right of trial by jury.

4. The decision of the lower court unreasonably limiting counsel in the examination of prospective jurors relative to prejudice deprives the defendant of a fair and impartial trial, uninfluenced by passion, prejudice or sympathy.

5. The opinion of the Court of Appeals of the District of Columbia fails to give proper effect to the decision of this court rendered in the case of *Allen v. United States,* 164 U. S. 492.

6. The opinion of the Court of Appeals of the District of Columbia rendered herein conflicts with the weight of authority in announcing as a positive rule of law that deliberation and premeditation in the matter of a homicide may be instantaneous, when the very words themselves contradict the decision.

7. The decision rendered below is untenable in that it abridges any distinction between first and second degree murder as enacted by Congress for the District of Columbia.

WHEREFORE, the premises considered, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Court, directed to the Court of Appeals of the District of Columbia, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered 5255 and entitled on its docket, "ALFRED SCOTT ALDRIDGE *v.* UNITED STATES", and that the said judgment of the Court of Appeals of the District of Columbia may be reversed, and for such other and further relief as to the Court may seem meet and proper.

ALFRED SCOTT ALDRIDGE,
By JAMES F. REILLY,
Attorney for Petitioner.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 683

ALFRED SCOTT ALDRIDGE, PETITIONER,

vs.

UNITED STATES OF AMERICA, RESPONDENT.

BRIEF IN SUPPORT OF PETITION.

I. The Jurisdiction of this Court.

The jurisdiction of this Court to issue the writ prayed for herein is conferred by Section 240-A of the Judicial Code as amended by the Act of February 13, 1925.

II. The Decision Below is Contrary to the Decisions of this Court.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury (United States Constitution, Amendment Six).

The trial of all crimes except in cases of impeachment shall be by jury (Article three, Section two, Clause three, Constitution of the United States).

The defendant in the trial below was charged with the most serious offense in the calendar of crimes. He was twice put on trial. At the first trial the jury were unable to agree and upon the second trial counsel for the defendant requested the Court to question prospective jurors on the *voir dire* relative to racial prejudice (R. 10). Reason therefor was assigned. Counsel informed the Court that he had been advised that one juror constituting the previous panel had probably been influenced in her deliberations by reason of racial prejudice.

It is impossible to determine the existence of prejudice without permitting a *voir dire* examination thereon. It is fundamental that the provisions of the Sixth Amendment contemplate a trial by an impartial jury, by those who feel no bias and entertain no prejudice towards the accused.

In the case of *Queen v. Hepburn,* 7 Cranch 297, a slave sought his freedom. A prospective juror announced that he detested slavery. He was excused for cause, to which an exception was noted. Chief Justice Marshall in announcing the decision of this Court upon that particular point, said:

> "It is certainly much to be desired that jurors should enter upon their duties with minds entirely free from every prejudice. Perhaps on general and public questions it is scarcely possible to avoid receiving some prepossessions, and where a private right depends on such a ques-

> tion the difficulty of obtaining jurors whose minds are entirely uninfluenced by opinions previously formed is undoubtedly considerable. Yet they ought to be superior to every exception; they ought to stand perfectly indifferent between the parties, and although the bias which was acknowledged in this case might not perhaps have been so strong as to render it positively improper to allow the juror to be sworn on the jury, yet it was desirable to submit the case to those who felt no bias either way."

In the instant case life and death were at stake. Information tended to establish and the trial Court was advised that at the first trial prejudice did exist (R. 10), yet the trial Court denied to the defendant the right to inquire in order to determine its existence. The language of this Court rendered in *Queen v. Hepburn, supra,* jurors "ought to stand perfectly indifferent between the parties", is plain. The expression "it was desirable to submit the case to those who felt no bias either way" is distinct. Both were announced by this Court in *Queen v. Hepburn, supra,* and both were ignored in the trial Court and in the Court below.

And again in the case of *Connors v. United States,* 158 U. S. 408, 413, the defendant was indicted for election frauds and upon the trial thereof his counsel sought to ascertain from prospective jurors the question of their political affiliations. The trial Court refused to allow defendant so to do, and the question was presented to the Supreme Court of the United States. This Court, speaking through Mr. Justice Harlan, reviewed *Queen v. Hepburn, supra,* and announced that:

> "It is quite true, as suggested by the accused, that he was entitled to be tried by an impartial jury, that is by jurors who had no bias or prejudice, that would prevent them from returning a verdict according to law and the evidence. It is equally true that a suitable inquiry is permissible in order to ascertain whether the juror has any bias, opinion, or prejudice that would affect or control the fair determination by him of the issues to be tried."

It is the birthright of every citizen when charged with crime to be tried and punished according to law. The organic law as embodied in the Constitution provides for trial by an *impartial* jury (Amendment six, Constitution of the United States). A suitable and pertinent inquiry is indispensable to determine whether prospective jurors are impartial. If this inquiry is denied, then the defendant has no means of determining the impartiality of the jury weighing in its very hands his right to live.

It is respectfully submitted that one of the simplest and plainest constitutional provisions was infringed when the trial Court herein refused to inquire as to racial prejudice.

The lower Court in its opinion in the instant case said (R. 46-47):

> "In a jurisdiction like the District of Columbia, where the colored race is accorded all the privileges and rights under the law, that are afforded the white race, and especially the right to practice in the courts, serve on the jury, etc., we are of the opinion that there was no abuse of

> discretion on the part of the trial court in refusing to permit the question to be answered by the jurors."

It is respectfully submitted that the lower Court erred in applying such a test. This Court should take judicial notice that racial prejudice does exist. The unfortunate race riots in the District of Columbia about 1920 are well within the memory of all.

If a prospective juror had answered the pertinent question relative to racial prejudice in the affirmative, then undoubtedly he would be wholly unfit and incompetent to serve as a juror.

In the case of *Reynolds v. United States*, 98 U. S. 146, Mr. Chief Justice Waite, in speaking of the determination by the trial Court of a formed opinion by a prospective juror, so as to render him competent or incompetent, said:

> "To make out the existence of the fact the juror who is challenged may be examined on his *voir dire* and asked any questions that do not tend to his infamy or disgrace."

Prejudice against a negro charged with having killed a white man is equally as devastating to the impartiality of a juror as a formed opinion. Other cases in harmony with petitioner's contention are:

Beatty v. United States, 27 Fed. (2d) 323, 324.
Pinder v. State, 27 Fla. 370, 8 So. 837.
State v. Madrid, 12 Fla. 151.
Pierce v. State, 13 New Hamp. 536.
People v. Reyes, 5 Cal. 347.

People v. Car Soy, 57 Cal. 102.
People v. Christie, 2 Park Crim. R. (N. Y.) 579.
Jones v. State, 2 Black. 475 (Ind.).
Lester v. State, 2 Texas App. 432.
State v. McAfee, 64 N. C. 339.
Hill v. State, 72 So. 1003.

The cases above cited are from every geographic section of the country and conclusively establish that the pertinent question should have been permitted. They also establish that racial prejudice is not confined to particular localities.

III. Conflicting Federal Appellate Decisions.

The decision rendered herein by the Court of Appeals of the District of Columbia sanctioning the refusal of the trial Court to inquire of prospective jurors relative to the entertainment by them of racial prejudice is inconsistent with the decision of the Circuit Court of Appeals for the Sixth Circuit rendered in the case of *Beatty v. United States*, 27 Fed. (2d) 323. In the Beatty case, *supra*, the prosecution was for a violation of the National Prohibition Act. Upon the *voir dire* examination counsel sought to elicit whether prejudice in favor or against the National Prohibition Act existed. Although the conviction was affirmed, the Court said:

> "The conviction must be affirmed, but the record discloses what we think is a misapprehension as to the practice. Upon examination of the jury by the judge, respondent's counsel

proposed six question which he wished to have put. The request was declined, and the judge asked questions which he thought covered the ground of these requests, so far as they were proper. The matter was apparently regarded by counsel, and perhaps by the trial judge, as if the criterion were whether the questions suggested, if answered in one way, would disclose grounds for challenge for cause, overlooking the right of respondent to get information aiding him to determine whether he wished to make a peremptory challenge. Obviously, the quest for this information is subject to the reasonable discretion of the trial judge, and cannot be carried too far without minimizing the good effect of examination by the judge instead of by counsel; but a reasonable amount of such inquiry in aid of the right of peremptory challenge should be permitted, and we think one of these questions was of that permissible character. It inquired whether any member of the jury was a member of or contributed to any organization for the purpose of enforcing the prohibition law. In Remus *v.* United States, 291 F. 501, 507, we held that an affirmative answer to this question would not disclose legal basis for challenge for cause; but, quite plainly, it would be a natural inducement as to the exercise of a peremptory challenge. While it would not be presumed that a juror would have, from such association, any prejudice which would prevent him from obeying the instructions of the court, yet we must regard such information as this as within that minimum which respondent is entitled to have as the basis of a peremptory challenge. See Armborst *v.* Cincinnati Co. (C. C. A. 6) 25 F. (2d) 240, 241."

The decisions of this Court are harmonious with the plain and unequivocal language of the Constitution. Trial by an impartial jury does not mean trial by a jury any one of whose constituents entertains prejudice. To deny to this petitioner the right to inquire whether a jury is impartial violates the very fundamental right of trial by jury and deprives to the defendant that right so sacredly given to him in the Constitution itself.

By Section 918 of the District of Columbia Code the accused and the prosecution are allowed, in capital cases, twenty peremptory challenges. Such a right cannot be intelligently exercised unless a rightful inquiry is permitted counsel to determine the fitness of prospective jurors.

It is respectfully submitted that the lower Court erred in sustaining the trial Court and that this Court should review and reverse the decision therein rendered.

IV. The Erroneous Opinion as to the Distinction Between First and Second Degree Murder as Announced by the Lower Court Contrary to the Decisions of this Court.

Murder in the first degree as defined by Congress and enacted in Section 798 of the Code of Law for the District of Columbia is as follows:

> "*Murder in First Degree.*—Whoever, being of sound memory and discretion, purposely, and either of deliberate and premeditated malice or by means of poison, or in perpetrating or in attempting to perpetuate any offense punishable

by imprisonment in the penitentiary, kills another, is guilty of murder in the first degree."

Section 800 reads as follows:

> "*Murder in Second Degree.*—Whoever, with malice aforethought, except as provided in the last two sections, kills another, is guilty of murder in the second degree."

The distinction between first and second degree murder under the District of Columbia Code will thus be seen to be whether it was done purposely and with deliberate and premeditated malice or with malice aforethought. This is a very narrow and quite imperceptible margin of difference. The statute, of course, limits the common-law crime of murder.

The lower Court announced that deliberation and premeditation may be instantaneous. This is in direct conflict with the decision of this Court announced in the case of *Allen v. United States*, 164 U. S. 492, wherein this Court said:

> "The substance of the lower court's instruction is that the intent necessary to constitute malice aforethought, need not have existed for any particular time before the act of killing, but that it may spring up at the instant and may be inferred in the act of killing. This is within the authorities as applied to the common law crime of murder, though where the crime is *classified* as in some states, proof of deliberate premeditation is necessary to constitute murder in the first degree."

This Court announced, "Where the crime is classified as in some States, proof of deliberate premedita-

tion is necessary to constitute murder in the first degree." Congress has *classified* murder in the District of Columbia. It is therefore respectfully submitted that the decision of the lower Court is directly in conflict with the decision of this Court as announced in *Allen v. United States, supra.*

An analysis of the words "deliberate" and "premeditated" indicates that each contemplates a function of the mind, that is, a weighing in the mind beforehand the deliberate intent to kill. The term "instantaneous" used by the lower Court can only be analyzed to mean "simultaneously", "on the instant". The decision of the lower Court utterly wipes away the distinction made between the common-law and the statutory crime of murder. Its doctrine is untenable. We revert to the original common-law crime.

In the case of *State v. Mangano,* 77 N. J. Law 544, 72 Atl. 366, 368, the defendant was tried and convicted of murder in the first degree. The trial Court in its charge said:

> "Premeditation does not require any length of time, a moment of time is sufficient. If you find from the evidence that the defendant had formed in his mind an intent to kill and then *instantly* he deliberately perpetrated the act to carry out the intention, that is deliberation and premeditation which the law requires in order to make it murder in the first degree."

The Court of Errors and Appeals of New Jersey in passing upon this charge said:

> "The noticeable feature of this instruction is, of course, the apparent, and as we think, the

> actual incongruity of the two adverbs 'instantly' and 'deliberately'."

It further said:

> "The result of combining in the same thought the words 'instantly' and 'deliberately' was to create an irreconcilable incongruity necessarily confusing to the jury and in our judgment incapable of being resolved conformably to the legal principle essential to a proper definition of murder in the first degree."

The statute of New Jersey as passed upon by the Court of Errors and Appeals of New Jersey is similar to the statute enacted by Congress for the District of Columbia. The New Jersey statute is as follows:

> "Murder perpetrated by means of poison or by lying in wait or by any other kind of wilful, deliberate and premeditated killing shall be murder in the first degree."

It is respectfully submitted that the decision of the New Jersey Court is entirely consistent with law and reason and the decision of the Court of Appeals of the District of Columbia rendered herein entirely irreconcilable with the weight of authority.

Murder in the first degree cannot be predicated on the mere existence of an intent to kill at the time of committing the crime. There must be deliberation and premeditation and a purpose to kill. Normally, premeditation comes first, an entertainment by the mind of a design to kill, then follows deliberation, the weighing of considerations pro and con, after which the killing being determined upon becomes wilful, deliberate

and premeditated in the sense intended by the Statute.

In the case of *Perkins v. Oxford Paper Company*, 104 Maine 109, 71 Atl. 476, 479, the court interpreted "instantaneous" as follows:

> "Instantaneous means done or occurring in an instant, or without any perceptible duration of time."

Likewise, in the case of *Antonian v. Southern Pacific Company*, 9 Cal. App. 718, 100 Pac. 877, 884, the California Appellate Court interpreted "instantly" as follows:

> "Instantly implies without any intervention of time, allows not a particle of delay, and makes an interval too small to be appreciated."

Again, in the case of *Sawyer v. Perry*, 88 Maine 42, 33 Atl. 660, 661, "instantaneous" was interpreted as follows:

> "Instantaneous means done or occurring in an instant or without any perceptible portion of time, as the passage of electricity appears to be instantaneous."

It is respectfully submitted that in stating a legal proposition of such importance as that which involves first degree murder, it is impossible to be too exact. The decision of the lower Court is inconsistent and irreconcilable with the decisions of this Court and the weight of authority and should be reversed.

Second degree murder is the killing of another with malice aforethought. "Aforethought" analyzed can only be interpreted as the thinking over of the act be-

fore the killing. Obviously, therefore, the lower Court's decision that a deliberate and premeditated killing may be instantaneous is erroneous and utterly inconsistent with reason and logic and violative of every sound principle of law.

V. The Petition Should Be Granted.

It is respectfully submitted that a serious constitutional question is herein involved and a very serious question of law presented. This Court should grant the petition prayed for herein and the judgment below reversed.

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